

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOHNATHAN HOLLAND,

Petitioner,

ORDER

- against -

HANS WALKER, Superintendent,

Civil Action No.
CV-99-5800 (DGT)

Respondent.

x

TRAGER, J.

On September 20, 1999, petitioner filed the above-captioned case seeking a writ of habeas corpus for alleged constitutional violations stemming from his state court convictions for four separate robberies of victims Laura Effel, Keith Brooks, David Funck and David Acus. The petition was referred to United States Magistrate Judge Marilyn D. Go for a Report and Recommendation.

On February 11, 2005, Judge Go issued a Report and Recommendation recommending that the petition be denied, that any request for a stay be denied and that any application for a certificate of appealability by the petitioner be denied. Petitioner's counsel filed objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure on March 17, 2005, and petitioner separately filed objections pro se on that same day.

Both objections are essentially rearguments of arguments made to the magistrate. On the central issue of whether the lineup procedure was unduly suggestive, petitioner's counsel has argued in her objections that in the lineup petitioner "was

sweaty, leaning forward while the other fillers sat calmly . . .

. The identifiers ha[d] just been told that the defendant was making trouble so they knew who the police had already identified as the robber" This characterization oversimplifies the record. Although two of the four identifiers testified that a detective entered the waiting room prior to the lineup and told the witnesses that the suspect was being difficult, one identifier testified that she did not remember the detective making such a statement. Furthermore, as Judge Go noted, each witness testified that "his or her identification of the defendant at the lineup was not affected by the shouting, discussions with other witnesses or any other event prior to viewing the lineup." R&R at 11. Judge Go's conclusion that the state court's decision that the lineups were properly conducted is, therefore, neither an unreasonable application of federal law nor based on unreasonable determinations of the facts is well-supported. After an independent review of the record and the thorough and detailed Report and Recommendation, the court agrees with Judge Go's Report and Recommendation. Accordingly, it is hereby

ORDERED that the Court adopts the Report and Recommendation and petitioner's application for writ of habeas corpus is dismissed. Further, a certificate of appealability shall not issue because petitioner has not demonstrated a substantial

showing of a constitutional violation. See 28 U.S.C. §2253(c)(2). The Clerk of the Court is directed to enter judgment and close the case.

Dated: Brooklyn, New York
September 27, 2005

SO ORDERED:

/s/
David G. Trager
United States District Judge

SENT TO:

Hon. Marilyn D. Go
United States Magistrate Judge

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